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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

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THE PEOPLE,

Plaintiff and Respondent,

v.

GUILLERMO JOSE VILLEGAS,

Defendant and Appellant.

C086852

(Super. Ct. No. CRF177000)

Following a jury trial, defendant Guillermo Jose Villegas was convicted of felony unlawfully driving or taking a vehicle (Veh. Code, § 10851, subd. (a)) with three prior vehicle theft convictions (Pen. Code, § 666.5, subd. (a)),<sup>1</sup> a prior strike (§§ 667.5, subd. (c), 1192.7, subd. (a)), and five prior prison terms (§ 667.5, subd. (b)). The trial court sentenced defendant to an 11-year prison term.

On appeal, defendant contends the trial court's failure to instruct the jury on reasonable doubt before deliberations violated his right to due process. We shall affirm.

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

## BACKGROUND

On the evening of November 5, 2017, Jacob G. parked his silver Ford Focus in front of his house. A set of golf clubs were left in the car. Jacob G. did not believe he locked the door to his house after returning inside. Sometime between 1:00 a.m. and 4:00 a.m. on November 6, 2017, the car was stolen. The car was worth about \$13,800. Both Jacob G's and his roommate's car keys were also missing from inside the house.

Defendant checked into a Motel 6 and registered the stolen Ford Focus with the desk clerk on November 7, 2017, at 9:36 p.m. At 2:10 a.m. the following morning, Corporal Pheng Ly of the Davis Police Department saw a silver Ford Focus exit eastbound Interstate 80 onto Richards Boulevard in Davis. Upon determining the car had been reported stolen two days prior, Corporal Ly followed the car as it got back onto the freeway and drove in the direction it came from.

Corporal Ly initiated a traffic stop. Defendant was the driver and his girlfriend Jessica Steele was a passenger. Corporal Ly ordered both occupants out of the car and questioned defendant after obtaining a *Miranda*<sup>2</sup> waiver. Defendant said the car belonged to a woman named Samantha or Lucy he met at Cache Creek Casino near Woodland. He and Steele borrowed the car about an hour ago to get something to eat, going to the Del Taco in Davis since the one in Woodland was closed. When Corporal Ly told defendant he had driven past the Del Taco in Davis when he exited the freeway and got back on, defendant answered that he got lost. Defendant denied staying at a Motel 6 when asked about the Motel 6 tag hanging from the windshield.

A search of the car found a Honda key that was taken from Jacob G.'s house. A search of defendant's cell phone found multiple text messages to Ward Sitkin on November 7, 2017. At 9:35 a.m., defendant texted Sitkin, "I came to get the car do you

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<sup>2</sup> *Miranda v. Arizona* (1966) 384 U.S. 436 [16 L.Ed.2d 694].

want me to bring it to your house.” Shortly thereafter defendant texted Sitkin that he had golf clubs and marijuana with him. The phone also contained 16 pictures of Jacob G.’s golf clubs, all taken at around 3:55 p.m. that day.

Sitkin told Corporal Ly that defendant drove to his house in a silver Ford Focus and offered to sell him golf clubs.

## DISCUSSION

At a trial conference before jury selection, the trial court informed the parties it intended not to provide duplicate instructions, so that any instruction given before the evidence was presented would not be given after the close of evidence. As an example, the court said it would not give the instruction on reasonable doubt after the close of evidence, as it would instruct the jury on reasonable doubt before the presentation of evidence. No objection was made to the court’s statement.

The trial court gave the standard jury instruction on reasonable doubt, CALCRIM No. 103, following opening arguments. The presentation of evidence concluded that same day.

Before deliberations the next morning, the trial court preceded the instructions by telling the jury, “I have some instructions for you and I will try to skip instructions that you heard already which means we’re already on page four.” The court then gave further instructions to the jury, including: “When it comes to instructions, pay careful attention to all of them whether given yesterday or today or at any point. All of the instructions must be considered together. If I repeat an instruction or idea, don’t conclude it’s more important than any other instruction or idea just because I repeated it.” The jury was also informed during this set of instructions, “You may not convict the defendant unless the People have proved his guilt beyond a reasonable doubt.” The trial court did not give the standard instruction defining reasonable doubt or any other instruction defining that concept in its instructions following the conclusion of evidence. The jury also was provided with written copies of all instructions, including CALCRIM No. 103.

Defendant contends the failure to instruct the jury on the definition of reasonable doubt following the conclusion of evidence violated his right to due process. He admits the trial court correctly instructed the jury on reasonable doubt following opening arguments. According to defendant, courts generally favor giving the instruction before deliberations, as it places the concept of reasonable doubt at center stage for the jury to consider during deliberation. Defendant concludes failing to do so is a violation of his right to due process and prejudicial in this “close” case.

The Legislature has determined that the timing of giving jury instructions is within the sound discretion of the trial court. “At the beginning of the trial or from time to time during the trial, and without any request from either party, the trial judge may give the jury such instructions on the law applicable to the case as the judge may deem necessary for their guidance on hearing the case.” (§ 1093, subd. (f).) “When the state of the pleadings requires it, or in any other case, for good reasons, and in the sound discretion of the court, the order prescribed in Section 1093 may be departed from.” (§ 1094.)

The appellate decisions agree. As the case defendant relies primarily on states: “We glean from these statutes two rules: First, *when* to instruct a jury is a matter within the sound discretion of the trial judge; he may instruct at any time during the trial. Second, even when a party requests instructions at the close of argument, if the court has already instructed on the subject it may in its sound discretion refuse to reinstruct. This necessarily follows from the broad discretion vested in the trial court by virtue of section 1094. [Citation.]” (*People v. Valenzuela* (1977) 76 Cal.App.3d 218, 221 (*Valenzuela*).) *Valenzuela* found reinstruction on credibility was needed because almost three days had elapsed between the instruction on credibility and closing argument, and the parties argued at length on credibility of identifying witnesses by paraphrasing the law of credibility in a disjointed fashion. (*Id.* at pp. 221-222.)

Defendant admits there is no evidence the jury was confused regarding reasonable doubt. Unlike *Valenzuela*, the parties did not argue about or attempt to define reasonable

doubt during closing argument. *Valenzuela* is also distinguished because the definition of reasonable doubt was given to the jury the day before closing argument and deliberations.

A court is required to reinstruct the jury if there is evidence of juror confusion, but in a short trial with no juror confusion, the trial court may instruct the jury once, before the presentation of evidence. (*People v. Chung* (1997) 57 Cal.App.4th 755, 758-759.) “The process of instructing jurors at the end of a trial is long and tedious. Breaking instructions into phases of the trial does not tax the attention span of jurors, provides timely and useful information to jurors as the trial progresses, and arguably benefits the parties.” (*Id.* at p. 760.) Declining to repeat the instructions, and pre-instructing the jury on key concepts was an effort to make the jury trial easier on jurors, which is always a worthy concept so long as due process is observed. In the absence of evidence of juror confusion, “the presumption that the jurors regularly performed their duties prevails (Evid. Code, § 664), and the trial judge did not abuse his discretion when he gave a portion of the instructions after opening arguments and a portion of the instructions after closing arguments.” (*Chung*, at p. 760.) The same applies here.

#### DISPOSITION

The judgment is affirmed.

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/s/  
BLEASE, Acting P. J.

We concur:

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/s/  
BUTZ, J.

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/s/  
MURRAY, J.